IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/06/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.10961 OF 1999

N. Shanmugham .. Petitioner

-Vs-

1. The Commissioner and
Secretary to Government,
Education Department,
Fort St. George,
Chennai 600 009.

2. The Principal,
District Institute Education &
Training, Mayanur,
Karur District,
Pin: 639 108.

3. The Correspondent,
M/s. Nagammal Teacher Training
Institute, Periyar Nagar,
Tirichirapalli 620 021.
(Impleaded as per order dated
18.12.2001 in WMP.No.27082/01) .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari as stated therein.

!For Petitioner : Mr.M. Rajaraman

^For Respondents 1-2 : Mr.P.S.Sivashanmugasundaram
A.G.P.,

Respondent-3 : Mr.D. veerasekaran

:J U D G M E N T

The petitioner was appointed as Laboratory-cum-Workshop Assistant in Nagammal Teacher Training Institute on 15.10.1980. By

G.O.Ms.No.12 67 Finance (PC-I) Department dated 8.12.1985, One man Committee recommended for revision of pay scale. By G.O.Ms.No.762 dated 20.8.1986, the Government fixed pay scales and the second respondent issued letter dated 15.4.1998 ordering fixation of pay scale with effect from 1 .8.1992. Subsequently, the second respondent issued letter dated 10.7.1999 staying the revision of pay scale as certain clarification was to be obtained and thereafter the second respondent issued letter dated 13.10.1998 cancelling the earlier letter. However, thereafter the second respondent issued Letter in Na.Ka.No.10/E/99 dated 11.5.1999 cancelling the revision of pay scale. The second respondent also issued direction for deduction of the excess amount already paid to the petitioner. The aforesaid letter is being challenged in this writ petition.

2. So far as the fixation of pay scale, which has been subsequently revised and reduced, is concerned, it appears that by wrong interpretation higher pay scale has been made available to the petitioner even though he had not been appointed in the said post. Therefore, there is no justification in the contention of the petitioner that the pay scale subsequently fixed should be quashed and the petitioner should be given the enhanced pay scale.

3. However, the direction regarding recovery of excess amount cannot be sustained for the following reasons: The petitioner had been paid amount of higher scale on the basis of the order passed by the respondents and he had no say in the matter. It is not a case where on the basis of any erroneous representation of the petitioner, higher amount has been paid and the mistake was discovered subsequently. Mistake, if any, is that of the respondents. The amount having already been disbursed to the petitioner, should not be subsequently recovered merely because the mistake was discovered by the Government. An employee is entitled to get scale of pay fixed by the employer or the superior officer. If an amount is fixed and subsequently it is found that he is not entitled for higher amount, reduction in pay scale should not result in realisation of the amount earlier paid.

4. For the aforesaid reasons, the writ petition is allowed in part and the direction regarding recovery of the alleged excess amount is quashed. No costs.

Index : Yes
Internet : Yes
dpk

To

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